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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,132	10/16/2001	Steven Curtis Zicker	IR 6562-02	3795

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EXAMINER

SPIVACK, PHYLLIS G

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 12/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/978,132

Applicant(s)

Zicker et al.

Examiner
Phyllis G. Spivack

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1614



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 4, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6, 8
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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Applicants' Amendment filed September 4, 2002, Paper No. 10, is acknowledged. Claims 1-29 remain under consideration.

Information Disclosure Statements filed April 15, 2002 and September 16, 2002, respectively, Paper Nos. 6 and 8, are further acknowledged. Each reference has been reviewed to the extent it is provided in the English language. A source of publication or Internet site is required for each reference.

A new title is noted.

Applicants are advised that should claim 1 be found allowable, claim 27 will be objected to under 37 C FR 1.75 as being a substantial duplicate. When two claims in an application are duplicates or else so close in content that they both cover the same subject matter, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP 706.03(k).

In the last Office Action all claims were rejected under 35 U.S.C. 103 as being unpatentable over Paul et al., WO 94/02036. It was asserted Paul teaches nutritional, antioxidant formulations for warm blooded animals to provide sustained energy, particularly in old age, comprising antioxidants, such as l-carnitine, lipoic acid, vitamin C and vitamin E, in addition to components necessary to meet ordinary nutritional requirements.

Applicants argue references to antioxidants are only tangential and none of the effects of the invention are disclosed as being due to the antioxidants per se.

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Following the amendment to method claims 12 and 26, now directed to inhibiting the onset of deterioration of the learning mental capacity and increasing the learning mental capacity, respectively, of an adult companion pet, the rejection of record under 35 U.S.C. 103 is withdrawn with respect to claims 12-22 and 26. The open language of instant claims 1-11, 23-25 and 27 does not exclude the addition of any number of other active nutrients in companion pet diet formulations. Because intended use confers no patentable weight to composition claims, the rejection of claims 1-11, 23-25 and 27-29 is maintained. Motivation is clearly provided to prepare formulations for dogs and cats wherein the antioxidants vitamin C, l-carnitine, α -lipoic acid and vitamin E are incorporated to treat old age.

*all
canceled*

Claim 27 was rejected in the last Office Action under 35 U.S.C. 102(b) as being anticipated by Paul et al., WO 94/02036. It was asserted Paul teaches nutritional formulations that meet ordinary nutritional requirements of warm-blooded animals comprising antioxidants.

Applicants' arguments are the same as those directed to the rejection of record under 35 U.S.C. 103.

The rejection under 35 U.S.C. 102(b) is maintained for the reasons of record. Intended use confers no patentable weight to composition claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamilton et al., WO 01/58271.

Hamilton teaches the administration of pet food preparations comprising α -lipoic acid, l-carnitine and vitamins C and E for anti-aging effects and to improve mental acuity. See page 3, lines 8-9, page 4, line 10, and page 5, lines 19-28. Hamilton does not recite "increasing learning mental capacity" or "inhibiting the onset of deterioration of the learning mental capacity". However, one skilled in the art would have been motivated to prepare a companion pet diet comprising antioxidants for their anti-aging properties to increase learning capacity in view of Hamilton. Such would have been obvious in the absence of evidence to the contrary because improving the sharpness and clearness of intellectual perception or vision reasonably encompasses increasing learning capacity. The determination of optimal concentrations of the active ingredients is a parameter well within the purview of those skilled in the art of formulation chemistry through no more than routine experimentation.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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Claims 1, 2, 12, 13, 26 and 27 are rejected under 35 U.S.C. 102(a) as being anticipated by Milgram et al., Internet site.

Milgram teaches the administration of a broad spectrum of antioxidants to improve learning in aged dogs.

Packer et al., Free Radical Biology & Medicine, and Castvetri et al., Int. J. Devl. Neuroscience, are cited to show a nexus between α -lipoic acid and memory improvement.

It is noted in co-pending application S.N. 09/922660 a statutory type double patenting rejection under 35 U.S.C. 101 is set forth with the present application.

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicants reminded of the extension of time policy as set forth in 37 C FR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C FR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication should be directed to Phyllis Spivack at
telephone number 703-308-4703.

November 29, 2002

Phyllis Spivack

PHYLLIS SPIVACK
PATENT EXAMINER
GROUP ~~12~~ 1614